

## **RESTITUTION**

Many victims are interested in how they can be repaid for their financial losses suffered as a result of a crime. This brochure provides an overview of the process of restitution.

### **What is Restitution?**

Restitution is the process of giving back to the proper owner something taken away or lost. In federal court, the defendant may be ordered to pay restitution for costs resulting from injury, or damage or loss of property. The defendant may also be ordered to pay for lost income, child care, transportation, and other expenses related to the victim's participation in the investigation or prosecution of an offense.

The Mandatory Restitution Act of 1996 established procedures for determining the amount of restitution to which a victim is entitled. Information concerning crimes which occurred before the Act was passed (April 24, 1996) is also included in this brochure.

The Act provides that "identified" victims may be entitled to an order of restitution as part of the criminal sentence imposed on the defendant, for certain losses suffered as a result of the commission of an offense, or as part of a plea agreement. Victims may be either individuals or businesses.

### **How is Restitution Ordered?**

Restitution is ordered to named victims in specified amounts by the judge at sentencing and is included as part of the Judgment in a Criminal Case. A criminal judgment is the legal equivalent to a civil judgment when it includes an order directing that the defendant make restitution payments as part of his/her sentence.

Unfortunately, as a practical matter, a defendant who has no money or potential to make money may be unlikely to ever make meaningful restitution to the victims of a crime.

If a defendant pleads guilty or is found guilty at trial, available information on each identified victim's loss, usually obtained by the case agent during the investigation, will be provided to the United States Probation Office by the United States Attorney's Office. A U. S. Probation Officer is assigned to investigate the background of a defendant and prepare a pre-sentence report for the Judge, recommending the most appropriate sentence.

Identified victims whose losses are included in the counts of conviction or as part of a plea agreement will also have the opportunity to request restitution and explain their losses in an Affidavit of Loss Statement, provided by the U. S. Probation Officer. Victims should provide receipts or other verification where possible.

### **What Expenses Are Eligible?**

At sentencing, the Judge may order reimbursement to a victim for verified lost income and necessary child care, transportation, and other expenses related to participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense.

Victims of crimes such as telemarketing, child exploitation, interstate domestic violence and sexual assault, may be eligible for the full amount of identified victims' losses.

For an offense resulting in physical injury to a victim, the Court may order payment equal to the cost of necessary medical and related professional services and devices relating to physical, psychiatric and psychological care; payment equal to the cost of necessary physical and occupational therapy and rehabilitation; and/or reimbursement to the victim for income lost as a result of the offense.

In some fraud cases, restitution may be ordered where victims of the offense of conviction have suffered the loss of money or some negotiable instrument (investor fraud offenses or offenses involving the misuse of stolen credit cards), or the damage or loss of property. The Court may order a defendant to pay an amount equal to each victim's actual losses, usually the value of the principle or property fraudulently obtained.

## **How Does a Victim Begin Receiving Money?**

For cases in which the crimes were committed after April 24, 1996, the United States Clerk of the Court is charged with the collection and distribution of restitution as any payment becomes available.

The United States Attorney's Office, Financial Litigation Unit, is responsible for crimes prior to that date.

**IF YOU ARE AWARDED RESTITUTION, IT IS IMPORTANT THAT YOU KEEP THE U. S. ATTORNEY'S OFFICE, FINANCIAL LITIGATION UNIT (718/254-6080) OR THE CLERK OF THE COURT (718/260-2580) ADVISED OF ANY CHANGES IN YOUR ADDRESS.**

Restitution payments are dependent upon the financial resources of the defendant at the time of sentencing and whether the defendant has any financially dependent family members. While the United States Attorney's Office attempts to seize any of the defendant's assets, in some cases the defendant has dissipated all the victims' money or placed their assets in hidden accounts.

### **How is Restitution Collected While the Defendant is in Prison?**

Every federal prison inmate who owes restitution is encouraged to participate in the Inmate Financial Responsibility Program which assists the inmate in developing a plan to pay this debt. If a defendant has the resources, he or she is expected to make restitution payments regularly and as much as possible, rather than just making minimum payments from wages earned from a prison job. Fifty per cent of any income acquired through this program is applied toward restitution. An inmate's hourly wage may be as low as 11 cents per hour. Defendants may also be ordered to pay a fine or special assessment to the Court. This money is deposited into the Federal Crime Victims Fund and is used to support crime victim compensation and victim assistance programs nationwide. Payment of special assessments has priority over any other debt. Payment of restitution is second in priority. Therefore, restitution payments made while the defendant

is in prison may not be substantial.

## **What Happens During Supervised Release?**

After a defendant's term of incarceration is completed, the defendant may be under "supervised release". Community supervision requires defendants to obey all court orders. To make sure defendants follow the Court's orders, they are supervised by the United States Probation Office.

While on supervision, the defendant's ability to make restitution is reviewed and monitored. A restitution payment agreement is established. Financial investigations of the defendant are made by reviewing credit reports, credit card accounts, telephone bills, bank accounts, and other documents that reveal the defendant's finances. A review of non-essential items is made throughout supervision to make sure that a defendant is paying an appropriate amount of his or her income towards restitution. Defendants are also required to report income, debts, and restitution payments to the Probation Office on a monthly basis.

If any restitution remains unpaid six months before the end of supervision, a report is submitted to the judge summarizing the record of the defendant's restitution payments. The judge may conduct a review to determine if the defendant has made a good faith effort to complete restitution, and, if not, the judge may extend the period of supervision.

### **What is the Role of the U. S. Attorney's Office's Financial Litigation Unit (FLU)?**

**The Financial Litigation Unit (FLU) of the United States Attorney's Office coordinates restitution payments and receives notice of all payments made by the defendant.** The FLU files a Notice of Lien in the county where the defendant resides and/or owns property. This allows the United States Attorney's Office to collect part of the outstanding debt if the property is sold or transferred.

The FLU enforces orders of restitution for 20 years from the filing date of the judgment (plus the time of actual incarceration) or until the death of the defendant.

## **What is the Role of the Clerk of the Court?**

The U. S. Clerk of the Court receives payments from the defendant and then will forward payment to victims.

In cases where there are many victims who are owed restitution, the payments received are divided according to the amount owed to each victim. As noted above, these payments tend to be quite small. The Clerk issues checks approximately twice a year and does not issue checks for small amounts because this is not economically feasible. Therefore, the Clerk will wait until there is a more substantial amount to disburse to victims.

**Be advised that, even though restitution may have been ordered, there is a possibility that you may not receive any restitution or you may only receive partial restitution paid over a very long period of time.**

## **COMMONLY ASKED QUESTIONS**

### **What happens if the defendant is not making a good faith effort to pay restitution?**

If a defendant is unwilling to enter into a wage assignment voluntarily, the Probation Office can request the United States Attorney's Office to get a court order taking part of the defendant's wages under appropriate circumstances. In addition, if the defendant has not made a good faith effort to pay, the judge can revoke supervision and order the defendant to serve a period of incarceration.

### **Can supervision be extended when restitution is still owed at the end of the original term ordered by the court?**

If the defendant has not paid restitution in full by the end of his or her supervision, the sentencing judge may conduct an informal judicial review. If the defendant has shown good faith in making payments, his or her supervision may be allowed to conclude without full satisfaction of the restitution obligation. However, if the original term of supervision is less than the maximum length allowed by law, the Probation Office may ask the judge to extend the term up to this authorized maximum

length in order for the Probation Office to continue to monitor restitution payments, thereby enforcing further the financial interest of the victims. If supervision is terminated, the Probation Office will coordinate efforts to obtain a promissory note from the defendant to pay the remainder of restitution.

### **Is restitution subject to dismissal through bankruptcy?**

No. Although a defendant might try to list restitution in documents submitted to the bankruptcy court, these amounts are not subject to dismissal through bankruptcy.

### **If a defendant owes me restitution, can I sue to collect?**

The United States Probation Office and the U. S. Attorney's Office will work hard to collect your restitution before the defendant's term of probation or supervision expires. However, the law also gives you the right to start a separate civil lawsuit in order to recover this debt at any time after the defendant is convicted and sentenced. A civil action is a private lawsuit that does not involve the government. Any amounts you recover in a civil lawsuit may be deducted from the criminal judgment of restitution. If you choose this option, you should know that a criminal statute prevents defendants from denying the allegations of the offense for which they were convicted. You should consult an attorney if you are interested in pursuing such a civil lawsuit since this must be done in a specific period of time. An attorney will be able to advise you on procedures relating to the filing of such an action.

### **Can I obtain a defendant's personal address?**

At the time of sentencing, the defendant's address, date of birth, and social security number are listed on the Judgment and Commitment Order. You may obtain a copy of the Judgment from the Clerk of the Court's office or by contacting the Victim-Witness Coordinator of the United States Attorney's Office. The Probation Office is not allowed to disclose the defendant's address without a court order.

### **Can I obtain information about the defendant's prison status?**

Any victim or witness of a serious crime who wishes to be notified about a defendant's release or release proceedings may participate in the United States Bureau of Prison's Victim Notification Program. If you wish to do so, you should contact the Victim-Witness Coordinator in the United States Attorney's Office. Participants are notified of defendant transfers to other facilities, the death, furlough or escape of an inmate (notification of the latter is done telephonically), and parole or mandatory release. Participants in this program may also request information about the status of restitution payments. The names and addresses of participants in this program are not released to the defendant.

## **ADDITIONAL INFORMATION**

Under the Act, if an identified victim discovers further losses after a judgment has been filed, that victim has 60 days after discovery of the losses to petition the Court for an amended restitution order. This order may be granted only upon a showing of good cause for the failure to include such losses in the initial claim for restitution.

After a Judge has imposed a restitution order, the United States Attorney or an identified victim may later make a motion to the Court if he/she discovers a material change in the defendant's economic circumstances that affect his or her ability to pay restitution. Victims with such information should contact the United States Attorney's Office, Financial Litigation Unit.

**YOUR RIGHTS AS A  
CRIME VICTIM**

**WHAT YOU SHOULD  
KNOW ABOUT  
RESTITUTION**



**United States  
Attorney's Office  
Eastern District of New York  
One Pierrepont Plaza  
Brooklyn, New York 11201**

**THE UNITED STATES ATTORNEY'S  
OFFICE IS COMMITTED TO  
PROTECTING THE RIGHTS OF  
CRIME VICTIMS AND WITNESSES.  
IF YOU HAVE QUESTIONS OR  
COMMENTS ABOUT YOUR STATUS  
OR RIGHTS AS A VICTIM, PLEASE  
CONTACT US.**

**RESOURCES WHICH MAY BE  
HELPFUL**

United States Attorney's Office  
Victim-Witness Coordinator  
1/718-254-6256

Financial Litigation Unit  
1/718-254-6080

United States Clerk of the Court  
Eastern District of New York  
1/718-260-2580

United States Bureau of Prisons  
1/800-359-3267  
[www.bop.gov](http://www.bop.gov)

United States Probation Office  
Eastern District of New York  
1/347-534-3400

National Center for Victims of Crime  
1/800-394-2255

National Organization for  
Victim Assistance (NOVA)  
1/800-394-2255

National Eldercare Locator Hotline  
1/800-677-1116

Crime Victims Hotline  
1/212-577-7777

